

Local 1291, International Longshoremen's Association, AFL-CIO and Trailer Marine Transport Corporation

Local 1242, International Longshoremen's Association, AFL-CIO and Trailer Marine Transport Corporation

Local 1332, International Longshoremen's Association, AFL-CIO and Trailer Marine Transport Corporation. Cases 4-CB-4397, 4-CP-346, 4-CB-4398, 4-CP-347, 4-CB-4399, and 4-CP-348

3 August 1983

DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND
HUNTER

On 24 May 1982 Administrative Law Judge William A. Gershuny issued the attached Decision in this proceeding. Thereafter, Respondents filed exceptions and a supporting brief,¹ and the Charging Party, the General Counsel, and the Intervenor, United Industrial Workers, Service Transportation, Professional and Government of North America, SIUNA-AGLIWD, AFL-CIO, filed answering briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,² and conclusions of the Administrative Law

¹ In addition, Respondents filed a motion to reopen the record and seek to submit driver's licenses and voter certifications of Trailer Marine Transport Corporation (TMT) employees as additional evidence that TMT's recognition of SIU was illegal. The Charging Party and the General Counsel filed oppositions thereto. Subsequently, Respondents filed a second motion to reopen the record in which they seek to adduce other unspecified evidence in support of their contention. The Charging Party, the General Counsel, and the Intervenor filed oppositions thereto. We hereby deny Respondents' motions as it has not been shown that this information constitutes newly discovered or previously unavailable evidence. See Sec. 102.48 of the Board's Rules and Regulations, Series 8, as amended. Furthermore, we deny the motions to the extent that they merely attack credibility. See *Kenai Air Service Inc. d/b/a Kenai Helicopters*, 235 NLRB 931 (1978). We also deny Respondent's motion request to subpoena certain records of SIU.

² Respondents have excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

The Administrative Law Judge found, and we agree, that Respondents engaged in recognition picketing. In addition to the reasons noted by the Administrative Law Judge in support of his conclusion, we rely on Respondents' claims to TMT that the work being performed at the terminal was under the jurisdiction of the International Longshoremen's Association and an admission at the hearing that a reason for the picketing was a desire to represent TMT employees as evidence of a recognition

Judge and to adopt his recommended Order, as modified herein.³

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified and set out in full below, and hereby orders that the Respondents, Local 1291, International Longshoremen's Association, AFL-CIO; Local 1242, International Longshoremen's Association, AFL-CIO; and Local 1332, International Longshoremen's Association, AFL-CIO, Philadelphia, Pennsylvania, their officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Picketing or causing Trailer Marine Transport Corporation or any other person to be picketed, or threatening to picket, or causing Trailer Marine Transport, or any other person, to be picketed, where an object thereof is to force or require Trailer Marine Transport Corporation to recognize or bargain with Local 1291, International Longshoremen's Association, AFL-CIO; Local 1242, International Longshoremen's Association, AFL-CIO; or Local 1332, International Longshoremen's Association, AFL-CIO, or any other labor organization, as the representative of Trailer Marine Transport Corporation's employees at its terminal at Petty's Island, North 36th Street and Delaware River, Pennsauken, New Jersey, or to force or require the aforesaid employees of Trailer Marine Transport Corporation to accept or select Local 1291, International Longshoremen's Association, AFL-CIO; Local 1242, International Longshoremen's Association, AFL-CIO; or Local 1332, International Longshoremen's Association, AFL-CIO, or any other labor organization, as their collective-bargaining representative until the Board determines that a question concerning representation may appropriately be raised under Section 9 of the Act.

(b) Restraining or coercing employees of Trailer Marine Transport Corporation, Raiders Express,

objective. Moreover, we find that, although pickets carried signs which referred to TMT employees' substandard wages and working conditions, there is nothing in the record to support a finding that the picketing had solely an area standards purpose, particularly since it is undisputed that Respondents had no knowledge of the wages and working conditions prior to the picketing. *Essex County Building and Construction Trades Council and its Constituent Members, et al. (Index Construction Corporation)*, 243 NLRB 249, 252 (1979).

³ We shall modify the recommended Order to include provisions which more specifically remedy the violations found and to include a general cease-and-desist provision which was contained in the Administrative Law Judge's notice to members but was inadvertently omitted from his recommended Order.

Inc., Blue Lines, Inc., Armstrong Trucking Company, or of any other employer in the exercise of their rights guaranteed in Section 7 of the National Labor Relations Act, as amended, by mass picketing at the entrance of Trailer Marine Transport Corporation's terminal at Petty's Island, North 36th Street and Delaware River, Pennsauken, New Jersey, blocking ingress to and egress from the terminal, and by threatening any such employees with unspecified reprisals for crossing Respondents' picket line.

(c) In any other manner restraining or coercing employees in the exercise of their rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act.

(a) Post at Respondents' business offices and meeting halls copies of the attached notice marked "Appendix."⁴ Copies of said notice, on forms provided by the Regional Director for Region 4, after being duly signed by Respondents' authorized representative, shall be posted by Respondents immediately upon receipt thereof, and be maintained by them for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondents to ensure that said notices are not altered, defaced, or covered by any other material.

(b) Mail to the Regional Director for Region 4 signed copies of said notice for posting by Trailer Marine Transport Corporation, Raiders Express, Inc., Blue Lines, Inc., Armstrong Trucking Company, or any of them, if said companies are willing to post such notices, at places where notices to their respective employees are customarily posted.

(c) Notify the Regional Director for Region 4, in writing, within 20 days from the date of this Order, what steps Respondents have taken to comply herewith.

⁴ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions,

the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT picket or cause Trailer Marine Transport Corporation or any other person to be picketed, or threaten to picket, or cause Trailer Marine Transport Corporation, or any other person, to be picketed, where an object thereof is to force or require Trailer Marine Transport Corporation to recognize or bargain with Local 1291, International Longshoremen's Association, AFL-CIO; Local 1242, International Longshoremen's Association, AFL-CIO; or Local 1332, International Longshoremen's Association, AFL-CIO, or any other labor organization, as the representative of Trailer Marine Transport Corporation's employees at its terminal at Petty's Island, North 36th Street and Delaware River, Pennsauken, New Jersey, or to force or require the aforesaid employees of Trailer Marine Transport Corporation to accept or select Local 1291, International Longshoremen's Association, AFL-CIO; Local 1242, International Longshoremen's Association, AFL-CIO; or Local 1332, International Longshoremen's Association, AFL-CIO, or any other labor organization, as their collective-bargaining representative until the Board determines that a question concerning representation may appropriately be raised under Section 9 of the Act.

WE WILL NOT restrain or coerce employees of Trailer Marine Transport Corporation, Raiders Express, Inc., Blue Lines, Inc., Armstrong Trucking Company, or of any other employer in the exercise of their rights guaranteed by Section 7 of the National Labor Relations Act by mass picketing at Trailer Marine Transport Corporation's terminal located on Petty's Island, North 36th Street and Delaware River, Pennsauken, New Jersey, blocking ingress to or egress from the terminal, or by threatening any such employees with unspecified reprisals for crossing our picket line.

WE WILL NOT in any other manner restrain or coerce employees in the exercise of their rights guaranteed by Section 7 of the National Labor Relations Act, as amended.

LOCAL 1291, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO

LOCAL 1242, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO

LOCAL 1332, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO

DECISION

STATEMENT OF THE CASE

WILLIAM A. GERSHUNY, Administrative Law Judge: A hearing was held on April 16, 1982, in Philadelphia, Pennsylvania, on consolidated complaints issued March 9 and 24, 1982, alleging violations of Section 8(b)(7)(A) and (1)(A) of the Act, arising out of picketing activities during the period of February 8 through 22, 1982, at Respondent's terminal facility in New Jersey, following its voluntary recognition of Intervenor Union on February 5, 1982.

At issue principally is whether Respondent lawfully recognized Intervenor Union as the exclusive bargaining agent for its 10 employees.

Upon the entire record including my observation of witness demeanor, I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. JURISDICTION

The complaint alleges, the answer admits, and I find that the Charging Party, engaged in loading and discharging ocean-going barges with annual interstate services in excess of \$50,000, is an employer within the meaning of the Act.

II. LABOR ORGANIZATIONS INVOLVED

Respondent Local Unions and Intervenor Union both are labor organizations within the meaning of Section 2(5) of the Act.

III. UNFAIR LABOR PRACTICES

A. *The 8(b)(7)(A) Allegations*

There is little dispute as to the facts relevant to this alleged violation.

On February 1, 1982, TMT, a wholly owned subsidiary of Crowley Towing and Transportation, commenced terminal operations on Petty's Island, under lease from Cities Service. The island is situated in the Delaware river and is accessible only by bridge. At the island end of the bridge is located a Cities Service security guard and, a short distance beyond, a TMT security guard.

On the morning of February 4, 1982, ILA Business Agent Resta and Mahoney, after having heard for several weeks that TMT was about to commence operations and having failed to locate its whereabouts, crossed over to Petty's Island, were cleared by both sets of guards, and met TMT's director of operations, Randolph. When asked if a barge was coming in, Randolph replied that he did not know, but that possibly a petroleum barge would arrive. In fact, Randolph knew that a barge loaded with empty trailers was scheduled to dock the following day. The two union representatives asked to enter the trailers in which there were some people, but Randolph denied them access, informing them that only security guards and contractors were in the trailers. When asked if they could visit the wharf, Randolph, I find, replied that they could walk the half mile, but could not drive because of muddy roads. Resta and Mahoney did not ask to talk

with any of the employees at the wharf and left. TMT at the time had 9 to 10 employees and Resta and Mahoney observed them operating yard hustlers (tractors used to move trailers on and off the barges) as they were leaving. Resta then said to Mahoney, "I think Randolph lied to us."

No effort was made by Resta and Mahoney to talk to the employees as they left the island that day or as they returned to work the following day, February 5.

During the early hours of February 5, Local Union President Talmadge, conceded for purposes of this 8(b)(7)(A) case only to be a representative of ILA and the three Locals involved, learned that a barge was to be docked at the terminal and later that day from across the river actually witnessed it being unloaded.

At or about 9:15 a.m. on that same day, Resta and Mahoney again crossed over to the island and were cleared by the Cities Service guard, but this time, according to Resta's uncorroborated testimony which I am unable to credit due to witness demeanor, they were denied entry by the TMT guard who reportedly said, "My instructions are you are not allowed down there." In fact, no such instructions were given. They left and, again, made no effort to contact the employees as the employees left for the day, even though they were of the opinion that operation of yard hustlers was ILA work.

At the same time on February 5, SIU Port Agent Air was on the island, having entered at 8:10 a.m. under contractual authority because of the presence of an SIU-manned tugboat at the terminal. He learned from an operating engineer of the presence of unorganized TMT employees, spoke with them about 9:30 a.m., and, after they caucused for a short period, each of the TMT employees signed a SIU pledge card. Air then presented the cards to Director of Operations Randolph, whom he had not met before, and demanded immediate recognition. Air said that, unless recognition was given, the tugboat would be pulled off the job. Randolph verified all signatures against payroll records, contacted TMT's director of labor relations, was told to consult with local counsel, and proceeded with Air and the pledge cards to the attorney's office where, after the signatures again were verified, a written recognition was prepared and executed by Randolph and Air. Six days later, on February 11, 1982, TMT and SIU executed a 3-year labor agreement covering all TMT employees at the Petty's Island terminal.

On Monday morning, February 8, the three ILA Local Unions commenced picketing on the sole access road leading to the bridge, carrying signs which stated that TMT was paying below standard wages and turning away incoming trucks by telling drivers that ILA wanted the TMT work and "We are protesting non-union labor."

In fact, as early as February 5, the ILA Locals had actual knowledge of SIU's whirlwind organizing campaign. Talmadge admitted trying to telephone Air on the afternoon of February 5. Unless he was aware that Air had organized the employees, there would have been no reason to make such a call and, indeed, Talmadge gave no reason for the call. The true purpose of Tal-

madge's February 5 telephone call to Air became apparent several days later when the two spoke for the first time, with Talmadge telling Air that the TMT work belonged to ILA and that SIU should have contacted ILA before organizing the employees. Equally important is the fact that Resta, on Saturday, February 6, while parked on the bridge access road, said to Crowley Vice President Messer, "ILA cannot let SIU take the work away from them."

The record evidence in this case permits but three conclusions: one, that while SIU went about successfully organizing the employees, ILA's belated intentions were to organize the employer; two, that the sole and exclusive purpose of ILA's picketing was to coerce TMT into rescinding its lawful recognition of SIU and affording ILA exclusive representation of TMT employees; and three, that such conduct constitutes a clear violation of Section 8(b)(7)(A) of the Act, which provides in relevant part as follows:

(b) It shall be an unfair labor practice for a labor organization or its agents . . . (7) to picket . . . any employer where an object thereof is forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his employees . . . (A) where the employer has lawfully recognized in accordance with this Act any other labor organization . . .

The thrust of Respondent's defense is that TMT's recognition of SIU was unlawful in that it was "the result of illegal assistance of SIU by TMT, and illegal discrimination against ILA by reason of an arrangement between TMT and SIU." More specifically, they contend that Respondent's false statements as to whether and when work would be performed effectively prevented ILA "from specifically pursuing its demand or opportunity to speak with men as provided by law" and that, in light of SIU's contractual right of access to TMT operations served by SIU members, they should have had equal rights of access.

Their contentions find no support in fact or law. First, Randolph's misleading statements did not dictate the course of Respondent's action, because, in fact, at the critical period, Resta, Mahoney, and Talmadge all had actual knowledge of the presence of unorganized TMT employees performing typical ILA work on the property. Yet, they chose neither to request an opportunity to speak with the employees nor to make that opportunity for themselves by establishing an organizing operation at either end of the bridge at the end of the shift or at the beginning of the shift the following day. Had they done so, they would have had an unimpaired opportunity to organize each TMT employee prior to any contact by SIU. Second, there is nothing in this record whatever to suggest that SIU's organizing presence on the Island was known to Randolph or was for any purpose other than serving its members on the tugboat, that Randolph or TMT favored SIU representation over that of ILA, or

that there existed any understanding or agreement between TMT or SIU which gave the latter a favored opportunity to organize at the new operation. To be sure, ILA does not question the propriety of a contractual right of access to all operations of an employer served by union members—such provisions are common and, indeed, necessary if members are to be served effectively. Respondent's contention thus is reduced to one which calls for TMT either to breach its contract with SIU by denying it access or to give ILA equal access at any of its operations served by SIU members. To state the issue is to know its answer at once. Factually, TMT had no knowledge of SIU's presence on the property and, undeniably, SIU members were manning the tugboat about to dock that morning. Legally, the Board's recent decision in *Halo Lighting Division of McGraw Edison Co.*, 259 NLRB 702 (1981), is wholly dispositive.

B. The 8(b)(1)(A) Allegations

Paragraph 6 of the consolidated complaint alleges two violations: one, generalized mass picketing and the blocking of ingress to and egress from the terminal on the mainland side of the bridge on 36th Street; the other, a threat of unspecified reprisals by certain of the pickets to the driver of a supplier's vehicle seeking to cross over the Island.

The first is clearly proven by three photographs taken on February 9, showing pickets from curb to curb on 36th Street. It is uncontested that the three Respondent Local Unions provided pickets and that ILA picketing occurred during the period of February 8 through 22. Each of the people shown in the photographs were ILA pickets, as ILA picket signs were seen from time to time, none of the people were children or women, and none were seen to leave or enter the homes in that residential area. In addition, TMT Security Consultant Matthews corroborated the photographic evidence and testified as to several specific incidents in which pickets blocked the routes of trucks, spoke with the drivers as they had a right to do, and caused the trucks to leave the area without entering the terminal. Such conduct is violative of the Act. *Ironworkers, Local 455*, 243 NLRB 340, 346 (1979)

The second is established by the uncontroverted testimony of driver Beck, employed by Armstrong Trucking which was attempting to make a delivery to TMT. As Beck attempted to turn on to 36th Street, he was approached by men who told him that he was not allowed in the area "because they were all on strike." Beck left to seek a telephone to contact his dispatcher. When he returned and again attempted to turn on to 36th Street, he was again approached and told "they told me once and they're not going to tell me again, if I wanted some trouble, they would give me some trouble." Such conduct clearly is violative of the Act. *Railway Carmen, Local 543 (North American Car)*, 248 NLRB 285, 288 (1980).

[Recommended Order omitted from publication.]